

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE**

WEAVER’S COVE ENERGY, LLC)	
Appellant,)	
v.)	Case No. _____
MASSACHUSETTS OFFICE OF COASTAL)	
ZONE MANAGEMENT,)	
Respondent.)	
)	
MILL RIVER PIPELINE, LLC)	
Appellant,)	
v.)	Case No. _____
MASSACHUSETTS OFFICE OF COASTAL)	
ZONE MANAGEMENT,)	(CONSOLIDATED)
Respondent.)	
)	

RESPONDENT’S THIRD MOTION TO SUPPLEMENT THE DECISION RECORD

Pursuant to 15 C.F.R. 930.127(i)(4), 15 C.F.R. § 930.130(a)(2), and NOAA’s February 22, 2008, letter order, authored by Jane C. Luxton, General Counsel, respondent Massachusetts Office of Coastal Zone Management (MCZM) requests that the Secretary accept and include in the Decision Record for the above-captioned consolidated consistency appeals, two documents issued on March 10, 2008, which supplement and clarify information that is already in the Decision Record and which are significant to issues pending before the secretary for the reasons explained below. The two documents at issue represent the final agency actions taken by the Massachusetts Department of Environmental Protection (MassDEP) on three requests of Appellants, in relation to the Project, that had been pending before MassDEP. Specifically, the items are: MassDEP’s denial of a M.G.L. c. 91 license, dated March 10, 2008 (attached as Exh.

1); and, MassDEP's denial of a Water Quality Certification, dated March 10, 2008 (attached as Exh. 2) (collectively, "March 10, 2008 Denials").

In support of this motion, MCZM states as follows:

1. Weaver's Cove seeks to construct and operate an LNG import terminal on the east bank of the Taunton River in Fall River, Massachusetts, and its affiliate, Mill River Pipeline, LLC, seeks to construct and operate two lateral pipelines to transport revaporized natural gas from the proposed terminal to existing interstate pipeline facilities (collectively, "Project"). Appellants proposed having delivery of LNG to the proposed terminal and pipelines via tankers through Mount Hope Bay and the Taunton River.

2. To accommodate the proposed tanker traffic and otherwise facilitate the Project, Weaver's Cove proposes significant dredging activities, including dredging up to 2.6 million cubic yards of sediment in the federal navigation channel and turning basin, dredging and backfilling in association with installation of the lateral pipelines, and a significant amount of offshore disposal of dredged material. Applications for various federal and state permits, licenses, certifications or other approvals (collectively, "Permits") related to various aspects of these dredging related activities are, or had been, under review by the United States Army Corps of Engineers and MassDEP.

3. In July 2005, FERC issued a conditional approval of the Project that made its operation contingent on the Coast Guard determining that the proposed LNG tanker route is "suitable."

4. On May 9, 2007, the United States Coast Guard issued a preliminary assessment in which it found that "the waterway may not be suitable for the proposed type and frequency of

LNG marine traffic.” MCZM Supplemental Appendix 14, cover letter, at 2. The Assessment is in the Record.

5. On June 4, 2007, based on the serious concerns raised by the Coast Guard’s Assessment – questioning the viability of the LNG Project and, therefore, the need for dredging – MassDEP decided to stay its technical review of some of the applications for state Permits pending before it. MassDEP concluded that given the likelihood of a negative suitability determination, it should await the Coast Guard’s final determination. Weaver’s Cove Appendix 9; Mill River Appendix 8.

6. On July 6, 2007, to avoid a statutory presumption of concurrence, MCZM issued procedural objections on the Appellants’ separate requests for concurrence with federal consistency certifications. Because state law requires MCZM to obtain all outstanding state permits prior to making a substantive consistency review, and because Appellants refused to agree to the extension of time they had originally sought, MCZM had to issue its objections to preserve its rights and avoid the statutory presumption, because all requisite permits, licenses, certification or other approvals had not yet been issued by MassDEP.

7. On August 27, 2007, Appellants commenced these appeals of MCZM’s procedural objections.

8. On October 24, 2007, after Appellants filed their initial briefs, the Coast Guard issued its LOR, pursuant to 33 C.F.R. § 127.009, declaring a key stretch of the Taunton River to be “unsuitable from a navigation safety perspective for the type, size, and frequency of LNG marine traffic associated with [Weaver’s Cove’s] proposal.” LOR at 1. Weaver’s Cove requested that the Captain of the Port reconsider the decision set out in the LOR and, in so doing,

on December 7, 2007, the Captain of the Port affirmed his prior determination set out in the LOR.

9. On December 14, 2008, MassDEP issued five letters that represented its actions on various applications of Appellants that had been pending before it in relation to the Project. MassDEP issued to Weaver's Cove a federal Clean Water Act §401 water quality certification for the backfilling of a proposed lateral pipeline under the Taunton River, and MassDEP also issued to Mill River Pipeline a state M.G.L. c. 91 license approving the installation of the lateral pipeline, both of which were issued subject to various conditions.

10. The other three MassDEP Rulings dated December 14, 2007, identified deficiencies with respect to three separate requests: a request for a state M.G.L. c. 91 license for water dependent activities and structures associated with the proposed LNG terminal, including, among other things, a docking system for berthing LNG tankers ("Terminal Deficiency Letter"); request for a state M.G.L. c. 91 permit for dredging of the channel and turning basin to accommodate LNG tankers to deliver LNG to the terminal and of a trench for the proposed lateral pipeline ("Dredge Permit Deficiency Letter"); and a request for a state water quality certification with respect to proposed dredging activities in the channel and turning basin and associated with the lateral pipeline trench ("WQC Deficiency Letter").

11. The deficiencies that were identified in these letters arose because the LOR, in prohibiting the proposed tanker traffic, invalidated key facts and assumptions that the applicable regulations require MassDEP to consider as part of its review.

12. The Secretary has accepted into the Decision Record the following items: the LOR, the request for reconsideration of the LOR, and the affirmance of the LOR, and the five

rulings of MassDEP issued on December 14, 2007. *See* Letters of General Counsel Jane C. Luxton, dated January 2, 2008 and February 22, 2008.

13. Applicants responded to these three deficiency letters by instructing MassDEP to proceed with its review “based on the record as it now stands,” effectively inviting denials. *See* Exh. 1, Exh. 2. As a result, just a few days ago, on March 10, 2008, MassDEP had no choice but to deny each of these deficient requests. The March 10, 2008, M.G.L. c. 91 denial (Exh. 1) is the final agency action on the requests underlying both the Terminal Deficiency Letter and the Dredge Permit Deficiency Letter; and the WQC denial (Exh. 2) is the final agency action on the request underlying the WQC Deficiency Letter.

14. Under the CZMA, the consolidated record prepared by the lead Federal permitting agency shall be the initial record used by the Secretary for consistency appeals. 16 U.S.C. § 1466. The Secretary may accept supplemental information into the decision record that clarifies information contained in the consolidated record. 15 C.F.R. § 930.130(a)(2)(ii)(B). The Secretary enjoys wide latitude in determining the content of the appeal decision record. 15 C.F.R. § 930.127(e)(1).

15. The March 10, 2008 Denials relate directly to, and update and clarify, the actions it took on December 14, 2007.

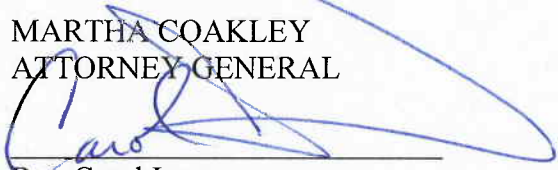
16. The March 10, 2008 Denials are significant to the issues pending before the Secretary for the same reasons that the December 14, 2007, MassDEP Rulings are significant. MCZM has explained those reasons thoroughly in the Supplemental Brief for Respondents being filed contemporaneously to this motion. For the sake of efficiency, MCZM does not repeat them, but rather incorporates them herein, by reference.

For the foregoing reasons, the Secretary should accept March 10, 2008 Denials, attached hereto as Exhs. 1 and 2, into the Decision Record for these consolidated consistency appeals, and give them due consideration.

Respectfully submitted,

MASSACHUSETTS OFFICE OF
COASTAL ZONE MANAGEMENT
By its attorney,

MARTHA COAKLEY
ATTORNEY GENERAL



By: Carol Iancu
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
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Tel. (617) 727-2200, ext. 2428

Dated: March 14, 2008

CERTIFICATE OF SERVICE

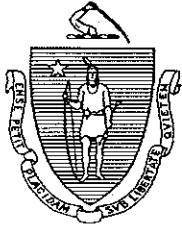
I hereby certify that on March 14, 2008, I served the foregoing motion by first-class mail, postage prepaid, and sent courtesy copies by email to the following:

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Carol Iancu



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LAURIE BURT
Commissioner

March 10, 2008

Mr. Ted Gehrig
Weaver's Cove Energy LLC
One New Street
Fall River, MA 02720

DETERMINATION FOR DENIAL OF A WATERWAYS LICENSE
FOR A WATER-DEPENDENT USE OF TIDELANDS
PURSUANT TO M.G.L. C. 91 AND 310 C.M.R. 9.00

I. Project Reference:

M.G.L., C. 91 Waterways License Application Nos. W04-1023D (Dredge) and W04-1031 (Liquefied Natural Gas Terminal Facility) by Weaver's Cove Energy, LLC and by Mill River Pipeline, LLC,- Submitted May 7, 2004, Updated October 2006 - DENIAL,

II. Project Description:

The project consists of three separate Waterways Application Nos. W04-1023D (Dredge) and W04-1031 (Liquefied Natural Gas Terminal Facility) by Weaver's Cove Energy, LLC and by Mill River Pipeline, LLC, Application No. W04-1030 (Western Lateral Pipeline Crossing).

- (1) Application No. W04-1023D is for the proposed maintenance and improvement dredging of approximately 2.3 million cubic yards of sediments within the Mount Hope Bay-Federal Navigation Channel and the turning basin, including the dredging and backfilling activities associated with the construction of the Western Lateral Pipeline Crossing (W04-1030). The majority of the sediments are slated for off shore disposal with some of the deeper parent material scheduled for reuse on site and as cover for the pipeline.



(2) Application No. W04-1031 is for the proposed construction of a Liquefied Natural Gas (LNG) 200,000 cubic meter LNG storage tank, receiving & storage terminal with auxiliary facilities, vaporization equipment, piping, pipeline connection to existing Algonquin transmission system, bulkhead improvements, unloading platform & trestle, service platform & trestle, boat ramp, and floating dock, storm water outfall pipes and associated fill largely within the Mount Hope Bay Designated Port Area. These elements are necessary to berth the LNG tankers which are an essential element of the project proposal.

(3) Application No. W04-1030, by Mill River Pipeline, LLC is for the installation of a 24 inch natural gas pipeline under the Taunton River that will deliver re-gasified liquefied natural gas to the Duke/Algonquin Gas Transmission system by pipelines in the municipalities of Fall River and Somerset. This application was approved by the Department in its Written Determination, dated December 14, 2007, which is currently under appeal.

When Weaver's Cove filed its application in May 2004, the entire project was undergoing review under the Massachusetts Environmental Policy Act ("MEPA") (EOEA # 13061). On July 28, 2006, the Secretary of the Executive Office of Environmental Affairs (EOEA) issued a Certificate on the Supplemental Final Environmental Impact Report.

III. Department's Findings and Determination

In accordance with its authority under Massachusetts General Laws Chapter 91 and its implementing regulations at 310 CMR 9.00, the Department issues this Written Determination asserting its intention to denying the applications referenced herein.

Weaver's Cove Energy, LLC ("WCE") filed the above referenced applications for water-dependent activities and structures associated with the WCE's proposed liquefied natural gas ("LNG") Terminal. These structures and activities include a pile-supported jetty, dolphins, boat ramp and a sheet pile bulkhead for shoreline stabilization with associated filling. The jetty, dolphins and boat ramp provide a docking system to service the LNG tankers that will transit the Taunton River to offload LNG at the Terminal. The applicant proposes maintenance and improvement dredging of approximately 2.3 million cubic yards of sediments within the Mount Hope Bay-Federal Navigation Channel and the turning basin. The majority of the sediments are slated for off shore disposal with some of the deeper parent material scheduled for reuse on site and as cover for the pipeline.

The Department conducted a technical review of the terminal license and dredge applications and notified the applicant in separate letters dated December 14, 2007 of its findings and determination. The Department has determined that the project proposes water dependent uses within private and Commonwealth Tidelands. The Department has reviewed the project pursuant to 310 CMR 10.12. The regulations provide that the Department shall presume that water dependent projects serve a proper public purpose, provided that the presumption may be rebutted 310 CMR 9.31(3). *The Department finds that the applicant is not entitled to the presumption regarding proper public purpose because it has not met the qualifying criteria of 310 CMR 9.31(1)(b).* The Department further finds that pursuant to 310 CMR 9.31(3)(b) the presumption regarding public purpose has been rebutted by the findings and conclusions of the United States

Coast Guard's Letter of Recommendation ("LOR"), dated October 24, 2007 regarding the unsuitability of the waterway for the type, size and frequency of transit of the LNG ships proposed by the applicant. The regulations provide that MassDEP shall not issue a license unless the project serves a proper public purpose that provides greater benefits than detriments to right of the public in said tidelands (310 CMR 9.31). The Department finds that the applicant has failed to demonstrate that the project serves a proper public purpose that provides greater benefits than detriments to rights of the public in said tidelands.

The December 14th notification letters further set forth the findings and conclusions that the applicant's respective submissions in support of the applications were deficient and failed to demonstrate compliance with the applicable regulatory provisions including, without limitation, the relationship between the navigational requirements of the project and extent of dredging (310 CMR 9.40(3)(a)), avoidance and minimization of the environmental impacts associated with dredging on marine life and aquatic habitats (310 CMR 9.40(2)), and non-interference with the public rights to navigation in the affected waterway 310 CMR 9.34(2). The factual assumptions the applications relied in addressing these regulatory performance standards were inconsistent and irreconcilable with the findings and conclusions of the LOR. The December 14th letters are incorporated by reference herein.

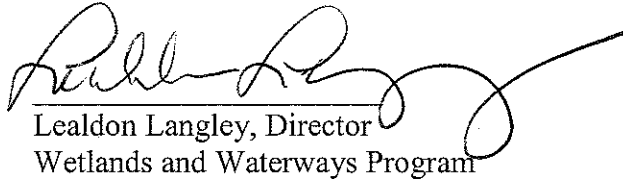
The applicant responded to the Department's notices by letters dated January 23, 2008 from its representative Keegan Werlin LLP, by requesting the Department, pursuant to 310 CMR 4.04(2)(b)2.c., to proceed with its review "based on record as it now stand". WCE's response also asserted its objections to the factual findings, regulatory interpretations and conclusions the Department relied on in determining that the applications were deficient and inconsistent with the applicable regulation provisions. The Department has reviewed the applicant's response and affirms the reasoning and conclusions set out in the December 14th notices.

In accordance with the provisions of MGL c.91 and its implementing regulations at 310 CMR 9.00, it has been determined the applicant has failed to provide information necessary to approve its application. Based on its review, the Department concludes that the applicant has failed to demonstrate that the project and activity as proposed will be conducted in a manner consistent with MGL, c. 91 and 310 CMR 9.00 and the application is therefore denied pursuant to the Department's authority at 310 CMR 9.11 and 9.14.

This Determination of denial is subject to appeal as described in more detail in the Notice of Appeal Rights section. No construction or alteration in or to any portion of the site within jurisdiction pursuant to M.G.L. Chapter 91 is authorized. If you have any further questions, please contact me at (617) 574-6882.

THIS DETERMINATION IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION ON THE 10th DAY OF MARCH, 2008

Sincerely,



Lealdon Langley, Director
Wetlands and Waterways Program

Cc: Fall River Conservation Commission
Somerset Conservation Commission

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Notice of Appeal Rights:

Appeal Rights and Time Limits

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L. c.30A, §10A, who have submitted written comments within the public comment period; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) DEM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period. To request an adjudicatory hearing, a Notice of Claim must be made in writing and sent by certified mail or hand delivery to the Department with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form, within twenty-one (21) days of the date of issuance of this decision and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, the municipal official of the city or town where the project is located, and the issuing office of the MassDEP at:

MassDEP Waterways Regulation Program
One Winter Street, 6th Floor
Boston, MA 02108

Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly and concisely the facts that are the grounds for the request and the relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any Notice of Claim for an adjudicatory hearing must include the following information:

- (a) the MASSDEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "person aggrieved" found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MASSDEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

Filing Fee and Address

A copy of the Notice of Claim along with a MASSDEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
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Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

March 10, 2008

Mr. Ted Gehrig
Weaver's Cove Energy, LLC
One New Street
Fall River, MA 02720

Re: **WATER QUALITY CERTIFICATION: DENIAL**
Application for BRP WW 07, Water Quality Certification for Major Dredging
Weaver's Cove Energy

At: Taunton River and Proposed Liquefied Natural Gas Terminal at Weavers Cove, Project
Location within the Towns of Somerset and Fall River

Project Reference:

Transmittal No: BRP W05-0847
Wetlands No: SE 24-444 and SE 70-392

Project Description:

On April 26, 2004, Weaver's Cove submitted a Water Quality Certification application for maintenance and improvement dredging of Mount Hope Bay Federal Navigation Channel and turning basin. The application was updated in November 2006.

The dredge volume is estimated to be 2.6 million cubic yards, which includes the dredging associated with the construction of the Mill River pipeline lateral. There are five elements associated with the dredging. Each element represented a specific location/reach within Mt. Hope Bay and Taunton River. The proposed dredging volume was determined in relation to the navigational requirements of the LNG ships, which are a function of their length, beam and draft.

Element	Location	Estimated Dredge Volume (cubic yards)
One	Federal Navigation Channel from Ma state line to the Braga Bridge	446,190
Two	Taunton River FNC (i.e. S-Bend)	775,982
Three	Turning Basin Silt	1,114,041 (element 3 & 4)
Four	Turning Basin Native	NA
Five	Mill River Pipeline Western Lateral	33,000

In addition, the applicant also projected an estimated volume 464,000 cubic yards as overdredge allowance. It is anticipated that dredging would have been done within the FNC and the Turning Basin simultaneously, subject to the time-of-year (TOY) restriction. Dredging at the Mill River Pipeline Western Lateral would have been performed between November 1 and January 14.

Sediment was to be removed mechanically and placed on dump scows to be disposed off at the Rhode Island Sound Disposal Site, for which the applicant had received a Suitability Determination from the Army Corps of Engineers. 27,000 cubic yards of the native dredged material from the Turning Basin (i.e. element 4) was proposed to be reused as backfill material for the Mill River Pipeline Western Lateral. On December 17, 2007, the Department issued a conditional Water Quality Certification only for the activity associated with the backfilling of the Western Lateral Pipeline trench, which is also subject to a Section 10/404 permit application submitted to U.S. Army Corps of Engineers.

When Weaver's Cove filed its application in May 2004, the entire project was undergoing review under the Massachusetts Environmental Policy Act ("MEPA") (EOEA # 13061). On July 28, 2006, the Secretary of the Executive Office of Environmental Affairs (EOEA) issued a Certificate on the Supplemental Final Environmental Impact Report. On October 24, 2007, the United States Coast Guard issued its Letter of Recommendation (LOR) on the navigational safety of the applicant's proposal in which it concluded that "transits of LNG vessels of the dimension proposed, at the frequency proposed, cannot be safely conducted" on the Taunton River and downstream portions Massachusetts waters, and those segments of the waterway were "unsuitable" for the use proposed. On December 17, 2007, the Department issued a conditional Water Quality Certification only for the activity associated with the backfilling of the Western Lateral Pipeline trench, which is also subject to a Section 10/404 permit application submitted to U.S. Army Corps of Engineers.

III. Department's Findings and Determination

The Department conducted a technical review of the application for Water Quality Certification, as referenced above notified the applicant in a letter dated December 14, 2007 of its findings and determination. In accordance with the provisions of MGL c.21, §§ 26-53 and Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), it has been determined the applicant has failed to provide sufficient information to support its application. The denial of this

application is issued pursuant to the Department's authority under 314 CMR 9.00, 314 CMR 4.00 and 310 CMR 4.00. Compliance with the requirements of 314 CMR 9.00 are necessary to demonstrate that the applicant's proposal can meet the water quality standards articulated in 314 CMR 4.00 as specified in 314 CMR 9.01.

The applicant was notified of technical deficiencies in a letter from the Department dated December 14, 2007, particularly the contradictions between the LOR's rejection of the applicant's alternative ship designs and transit frequencies and the baseline assumptions in the application and supporting submissions delineating the scope of dredging activities and quantifying the volume of sediment required for the project. Approving a dredge-based water quality certification without a set of valid parameters that delineate an approvable scope of the project and the nature and extent of adverse impacts to surface water quality and benthic habitat is infeasible and inconsistent with regulations that require the project meet water quality standards and minimize environmental impacts. The December 14th notification letters set forth the findings and conclusions that these inconsistencies and contradictions resulted in the applicant's failure to demonstrate compliance with the applicable regulatory provisions including, without limitation, 314 CMR 9.09 and 314 CMR 4.00. The finding and conclusions of the December 14th letter are incorporated by reference herein.

The applicant notified the Department by letter dated January 23, 2008 from its representative Keegan Werlin LLP, that it was requesting the Department, pursuant to 310 CMR 4.04(2)(b)2.c., to proceed with its review "based on record as it now stands". WCE's response also asserted its objections to the factual findings, regulatory interpretations and conclusions the Department relied on in determining that the applications were deficient and inconsistent with the applicable regulation provisions. The Department has reviewed the applicant's response and affirms the reasoning and conclusions set out in the December 14th notices.

The Department concludes that the applicant has failed to demonstrate that the project or activity as proposed will be conducted in a manner that will not violate applicable water quality standards and will minimize environmental impacts as required by 314 CMR 9.09 and, therefore, the application is denied.

Sincerely,



Glenn Haas
Acting Assistant Commissioner
Bureau of Resource Protection

cc: Fall River Conservation Commission
Somerset Conservation Commission

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Notice of Appeal Rights:

A) Appeal Rights and Time Limits

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by MassDEP when an application is required: (a) the applicant or property owner; (b) any person aggrieved by the decision who has submitted written comments during the public comment period; any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or (d) any governmental body or private organization with a mandate to protect the environment which has submitted written comments during the public comment period. Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to MassDEP, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Case Administrator
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347

B) Contents of Hearing Request

A Notice of Claim for Adjudicatory Hearing shall comply with MassDEP's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

- (a) the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- (b) the complete name of the applicant and address of the project;
- (c) the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- (d) if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- (e) a clear and concise statement that an adjudicatory hearing is being requested;
- (f) a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with MassDEP's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- (g) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

C) Filing Fee and Address

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. MassDEP may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship.

A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, MGL c.21A §16, 314 CMR 9.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

